

JOURNAL OF THE HOUSE.

Tuesday, October 11, 2005.

Met according to adjournment, at eleven o'clock A.M., with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

God of Infinite Goodness and Truth, we depend upon You and Your assistance as we endeavor to make our daily lives happy, meaningful, productive and intellectually challenging. Your gift of wisdom enables us to keep our personal and legislative goals, priorities and concerns clearly focused. In this exciting time of technological break-throughs and vast new sources of accurate information, inspire us to use these blessings in a creative and ethical manner. May we remain faithful to You, our principles, our human and religious values and beliefs as we struggle to build a better tomorrow for future generations.

Grant Your blessings to the Speaker, the members and employees of this House and and families. Amen.

Pledge of allegiance.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Statement Concerning Representative Harkins of Needham.

A statement of Mr. Rushing of Boston concerning Mrs. Harkins of Needham was spread upon the records of the House, as follows:

Statement concerning Representative Harkins of Needham.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Harkins of Needham, was not present in the House Chamber for today's sitting due to a long-standing family commitment. Had she been present for the taking of yeas and nay numbers 230 to 233, inclusive, on overriding vetoes by the Governor, she would have voted, in each instance, in the affirmative. Any roll calls that she missed today was due entirely to the reason stated.

Statement Concerning Representative Keenan of Southwick.

A statement of Mr. Rushing of Boston concerning Mr. Keenan of Southwick was spread upon the records of the House, as follows:

Statement concerning Representative Keenan of Southwick.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Keenan of Southwick, will not be present in the House Chamber for today's sitting due to his attendance at a hearing in his district. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement Concerning Representative Kennedy of Brockton.

A statement of Mr. Rushing of Boston concerning Mr. Kennedy of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kennedy of Brockton, will not be present in the House Chamber for today's sitting due to his hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement of Representative Kennedy of Brockton.

Statement of Representative Fox of Boston.

A statement of Ms. Fox of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact I was not present in the House Chamber for a portion of today's sitting due to official business in another part of the State House. Any roll calls that I may have missed was due entirely to the reason stated.

Statement of Representative Fox of Boston.

Papers from the Senate.

The House Bill providing death benefits for survivors of volunteer firefighters and other volunteer public safety personnel (House, No. 4369) came from the Senate passed to be engrossed, in concurrence, with an amendment at the end thereof (as printed), by inserting after the last paragraph (added by amendment by the House), the following paragraph:

Volunteer firefighters, death benefits.

“(f) This section shall not apply to any city, town or district which opts not to accept it, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting. It shall be the policy of the general court that it will not act favorably on any future appropriation request by a municipality or district for accidental death benefits under another provision of law.”.

Under suspension of Rule 35, on motion of Mr. Petrolati of Ludlow, the amendment was considered forthwith.

The committee on Bills in the Third Reading reported recommending that the House non-concur with the Senate in its amendment; and the report was accepted.

The House then non-concurred with the Senate in its amendment. Sent to the Senate for its action.

Bills

Relative to the Martha's Vineyard Land Bank (Senate, No. 1199) (on a petition); and

Martha s Vineyard.

Relative to the procurement officer of the city of Somerville (Senate, No. 2048) (on a petition) [Local Approval Received];

Somerville, procurement officer.

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Petitions were referred, in concurrence, under suspension of Joint Rule 12, as follows:

Petition (accompanied by bill, Senate, No. 2229) of Andrea F. Nuciforo, Jr., Michael R. Knapik, Joan M. Menard and Robert M. Koczera for legislation relative to out of state price authorization for Chapter 766 students. To the committee on Education.

Chapter 766 students, out of state price.

Martha's
Vineyard,
housing.

Revoked
licenses
drivers.

Department
of Revenue,
refund.

Taxi cabs,
regulate.

Frank
Jordan
garden.

Birth and
marriage
records.

Oxycontin,
prescriptions.

Gold Star
families,
plates.

Public
ways,
signs.

Bill
enacted.

Petition (accompanied by bill, Senate, No. 2230) of Robert A. O'Leary and Eric Turkington for legislation to establish the Martha's Vineyard housing bank. To the committee on Housing.

Petition (accompanied by bill, Senate, No. 2231) of Robert S. Creedon, Jr., Michael W. Morrissey, Robert S. Creedon, Jr., Bruce J. Ayers and others for legislation to prevent unlicensed operators or individuals with revoked licenses from operating a motor vehicle in the Commonwealth of Massachusetts. To the committee on the Judiciary.

Petition (accompanied by bill, Senate, No. 2232) of Richard T. Moore and Marie J. Parente for legislation to authorize the Department of Revenue to make a certain refund. To the committee on Revenue.

Reports of Committees.

By Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the following petitions:

Petition (accompanied by bill) of Robert P. Spellane relative to the penalty for operating a vehicle as a taxicab in violation of violation of city, county or town ordinances. To the committee on the Judiciary.

Petition (accompanied by bill) of Dianne Wilkerson and others relative to designating a certain parcel of land in the city of Boston as the Frank Jordan Memorial Rose Garden. To the committee on Municipalities and Regional Government.

Petition (accompanied by bill) of Robert P. Spellane and others for legislation to increase access to certain birth and marriage records; and

Petition (accompanied by bill) of Brian P. Wallace relative to requiring pain management therapy prior to the issuance of a prescription for oxycontin;

Severally to the committee on Public Health.

Petition (accompanied by bill) of Jennifer L. Flanagan and others that the Registrar of Motor Vehicles be authorized to issue Gold Star registration plates to families of certain deceased veterans; and

Petition (accompanied by bill) of Matthew C. Patrick for legislation to require cities and towns to erect street signs on all public ways;

Severally to the committee on Transportation.

Under suspension of the rules, on motion of Mr. O'Brien of Kingston, the reports were considered forthwith. Joint Rule 12 then was suspended, in each instance. Severally sent to the Senate for concurrence.

Engrossed Bill.

The engrossed Bill establishing an affordable housing trust fund in the town of Duxbury (see House, No. 3155) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Recess.

At twenty-two minutes after eleven o'clock A.M., on motion of Mr. O'Brien of Kingston (Mr. Petrolati of Ludlow being in the Chair), the House recessed until one o'clock P.M.; and at nineteen minutes after one o'clock the House was called to order with the Speaker in the Chair.

Recess.

Quorum.

Mr. Jones of North Reading thereupon asked for a count of the House to ascertain if a quorum was present. The Speaker, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 130 members were recorded as being in attendance.

Quorum.

Quorum,
yea and nay
No. 227.

[See Yea and Nay No. 227 in Supplement.]

Therefore a quorum was present.

Order.

An Order (filed by Mr. Scaccia of Boston) relative to special procedures for consideration of the Supplemental Appropriation Bill (House, No. 4430), having been reported from the committee on Rules, under the provisions of House Rules 7B and 7C, was considered.

Supplemental
Appropriation
Bill,
procedures.

After debate on the question on adoption of the order (Mr. Petrolati of Ludlow being in the Chair), Miss Reinstein of Revere moved that it be amended by striking out proposed Rule 73C.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 39 members voted in the affirmative and 105 in the negative.

Amendment
rejected,
yea and nay
No. 228.

[See Yea and Nay No. 228 in Supplement.]

Therefore the amendment was rejected.

Mr. Peterson then moved that the order be amended in proposed Rule 73D, in the second sentence, by inserting after the word "version" the following: "of said bill which has an amendment filing deadline of October 18".

The amendment was adopted.

On the question on adoption of the order, as amended, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 126 members voted in the affirmative and 19 in the negative.

Order
adopted,
yea and nay
No. 229.

[See Yea and Nay No. 229 in Supplement.]

Therefore the order (House, No. 4430, amended) was adopted.

Reports of Committees.

Mr. DeLeo of Winthrop, for the committee on Ways and Means, on a message from His Excellency the Governor (for message, see House, No. 4405), returning with his disapproval of items 1599-4123 and 1599-4124 contained in section 2A and sections 12 and 19

Supplemental
Appropriation
Bill,
disapprovals.

Supplemental
Appropriation
Bill,
disapprovals.

contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4370, amended), reported, in each instance, that said items and sections stand (as passed by the General Court), notwithstanding the objections of the Governor. Severally referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Donato of Medford, for said committee, reported, in each instance, that the matters be scheduled for consideration by the House.

Under suspension of Rule 7A, in each instance, on motion of the same member, said items and sections were considered; and the sense of the House, in each instance, was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution, as follows:

The question on passing said item 1599-4123 (contained in section 2A), notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 146 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 230 in Supplement.]

Therefore item 1599-4123 (contained in section 2A) was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

The question on passing said item 1599-4124 (contained in section 2A), notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 144 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 231 in Supplement.]

[Mr. Canessa of Lakeville answered "Present" in response to his name.]

Therefore item 1599-4124 (contained in section 2A) was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

The question on passing said section 12, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 145 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 232 in Supplement.]

Therefore section 12 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

The question on passing said section 19, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 145 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 233 in Supplement.]

[Mr. Canessa of Lakeville answered "Present" in response to his name.]

UMass salary
adjustments
item
1599-4123
stands,
yea and nay
No. 230.

State and
community
colleges
item
1599-4124
stands,
yea and nay
No. 231.

Middlesex
Hills
Reservation
section 12
stands,
yea and nay
No. 232.

Retrospective
salary
adjustments
section 19
stands,
yea and nay
No. 233.

Therefore section 19 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Orders of the Day.

The Senate Bill authorizing the Department of Highways to acquire and transfer certain parcels of land in the town of Bourne (Senate, No. 2078), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed, in concurrence.

Third
reading
bill.

The Senate Bill establishing a town manager for the town of Braintree (Senate, No. 2157, amended), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed, in concurrence. Sent to the Senate for concurrence in the amendments previously adopted by the House.

The Senate Bill clarifying the designation of the Purple Heart Highway (Senate, No. 1930); and

Second
reading
bills.

House bills

Relative to school improvement plans (House, No. 1112);

Relative to community preservation funds (House, No. 1680);

Relative to open space residential development (House, No. 3444);

Relative to the scenic roads in the town of Falmouth (House, No. 4135);

Establishing a department of public works in the town of West Newbury (House, No. 4271); and

Authorizing the town of Mansfield to establish a housing corporation (House, No. 4334);

Severally were read a second time; and they were ordered to a third reading.

The House Bill relative to state unemployment tax avoidance (House, No. 4342), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time.

State
unemployment
tax.

Pending the question on passing the bill to be engrossed, Mr. Rodrigues of Westport moved that it be amended in section 4, in line 177, by striking out the words "control means" and inserting in place thereof the words "control' means", and in lines 205 and 206, by striking out the words "transferee trust, or was a beneficiary of the transferee trust" and inserting in place thereof the words "transferring employer trust, or was a beneficiary of the transferring employer trust, also served as a trustee or exercised the powers of a trustee, directly or through an intermediary, in law or in fact, of the transferee trust, or was a beneficiary of the transferee trust"; and in section 5, in line 5, by striking out the words "to the determining" and inserting in place thereof the words "to determining".

The amendments were adopted; and the bill (House, No. 4342, amended) was passed to be engrossed. Sent to the Senate for concurrence.

Supplemental
appropriation,
section 3.

The engrossed Bill relative to monies received from the disposition of certain surplus property (see House, No. 4407), being the text contained in section 3 of the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4370, amended) (which had been returned to the House by His Excellency the Governor with recommendation of amendment) (for message, see House, No. 4406), was considered.

The amendment recommended by the Governor then was considered in the following form (as approved by the committee on Bills in the Third Reading):

By striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Subsection (m) of section 548 of chapter 26 of the acts of 2003 is hereby amended by striking out the figure ‘2005’ and inserting in place thereof the figure:— 2007.

SECTION 2. Subsection (n) of said section 548 of said chapter 26, as amended by section 1 of chapter 188 of the acts of 2004, is hereby further amended by striking out the figure ‘35BB’ and inserting in place thereof the following figure:— 35AA.”; and by inserting before the enacting clause the following emergency preamble:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is to depose forthwith of money from certain surplus property, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”.

The report was accepted.

The amendments recommended by the Governor then were rejected. Sent to the Senate for its action.

Swansea
Water
District.

The engrossed Bill authorizing the water commissioners of the Swansea Water District to appoint a clerk and a treasurer (see House, No. 3557), (which had been returned to the House by His Excellency the Governor with recommendation of amendment) (for message, see House, No. 4408), was considered.

The amendment recommended by the Governor then was adopted in the following form (as approved by the committee on Bills in the Third Reading):

By striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Section 9 of chapter 137 of the acts of 1949 is hereby amended by striking out the fourth sentence and inserting in place thereof the following sentence:— The duly elected commissioners shall annually appoint a clerk and a treasurer of the district, each for a term of 1 year.

SECTION 2. Section 9A of said chapter 137, inserted by chapter 132 of the acts of 1976, is hereby amended by inserting after the word ‘elected’, in line 4, the following words:— or appointed.

SECTION 3. This act shall take effect upon its passage.”.

Sent to the Senate for its action.

Quorum.

Mr. Broadhurst of Methuen then asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call (the Speaker having returned to the Chair) 143 members were recorded as being in attendance.

[See Yea and Nay No. 234 in Supplement.]

Therefore a quorum was present.

The Speaker then introduced Senator-elect Patricia D. Jehlen, who addressed the House briefly upon her departure from the House after serving for more than fourteen years.

Order.

On motion of Mr. Petrolati of Ludlow,—

Ordered, That when the House adjourns today, it adjourn to meet on Thursday next at eleven o’clock A.M.

Mr. Petrolati then moved that the House adjourn; and the motion prevailed. Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty-five minutes after three o’clock P.M. (the Speaker being in the Chair), the House adjourned, to meet on Thursday next at eleven o’clock A.M., in an Informal Session.